

1990 WL 599321 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 12, 1990

**\*1** The Honorable James M. Waddell, Jr.  
Senator  
District No. 46  
Post Office Box 1026  
Beaufort, South Carolina 29901

Dear Senator Waddell:

By your letter of October 3, 1990, you have asked for the opinion of this Office as to whether an individual may serve simultaneously on the Sea Pines Public Service District Commission and as a member (chairman) of the Beaufort County Aviation Board without violating the dual office prohibitions of the state Constitution.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. *Sanders v. Belue*, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980).

With your request, you forwarded a copy of the Beaufort County Council's ordinance creating the Beaufort County Aviation Board. Members of the Board are appointed by Beaufort County Council for two-year terms. No provision is found in the ordinance requiring Board members to take an oath of office, and no compensation is provided for in the ordinance. No qualifications to be met by Board members are specified in the ordinance.

Section III of the ordinance details the authority and responsibilities of Board members. These include the promotion of aviation-related actions to broaden the county's economic base; establishing aviation service and facilities goals for the county; assisting in preparation of master airport plans and making recommendations to council relative to plan adoption; instructing entities and county council of actions necessary to maintain growth space, clear zones, noise buffers, and the like; recommending funding priorities to county council; working with the Federal Aviation Authority and South Carolina Aeronautics Commission to reach the county's aviation goals; conducting public hearings and otherwise soliciting public participation relative to the county airports; negotiating contracts for ultimate adoption by county council; and establishing regulations for each airport (but any regulation requiring penalties or establishing charges must be submitted to county council to be adopted as an ordinance).

Considering all of the foregoing, it appears that the Beaufort County Aviation Board is largely advisory in nature and that the actual exercise of sovereign power is carried out by Beaufort County Council, based on the duties and responsibilities specified in the ordinance. Thus, one who serves on the Beaufort County Aviation Board probably would not be considered an office holder for dual office holding purposes.

**\*2** The Sea Pines Public Service District was created by the General Assembly, by Act No. 1158 of 1964, as amended. Section 3 of Act No. 1158 establishes the governing commission of the District, consisting of five residents of the District, who must be qualified electors. The commissioners are appointed by the Governor, upon the recommendation of a

majority of the Beaufort County Legislative Delegation (including the Senator), for terms of three years; that section of the act refers to terms of office and holding office, we note. No provision is made for taking an oath. Compensation of commissioners is governed by Act No. 715 of 1978; commissioners are to receive an annual salary of one thousand dollars (\$1,000.00), with the chairman receiving fifteen hundred dollars (\$1,500.00).

Powers of the commission are detailed in section 4 of Act No. 1158 of 1964 and include such powers as the power to sue and be sued; to make and enforce regulations; to acquire and dispose of property; to build, acquire, maintain, and operate facilities for water, sewer, medical, and fire services; to establish rates and charges; to exercise the power of eminent domain; to employ agents and employees and determine salaries and the need to be bonded; to contract; to levy taxes; and to issue bonds. These duties clearly involve an exercise of a portion of the sovereign power of the State.

Considering the foregoing factors, one who serves on the governing body of the Sea Pines Public Service District would be considered an officer for dual office holding purposes. Because a member of the Beaufort County Aviation Board would probably not be an office holder, the individual could most probably serve simultaneously in both capacities without contravening the dual office holding prohibitions of the state Constitution.

With kindest regards, I am Sincerely,

Patricia D. Petway  
Assistant Attorney General

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